

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

MONTANA ENVIRONMENTAL
INFORMATION CENTER, *et al.*,

Plaintiffs,

v.

UNITED STATES BUREAU OF
LAND MANAGEMENT, *et al.*

Federal Defendants,

v.

AMERICAN PETROLEUM
INSTITUTE, *et al.*

Intervenor Defendants.

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No. 4:11-CV-15-GF-SEH

STIPULATED AGREEMENT

WHEREAS on February 7, 2011, Plaintiffs filed this action seeking declaratory and injunctive relief, alleging that Federal Defendants violated the National Environmental Policy Act (NEPA), 42 U.S.C. 4321-4370h, in selling, executing, and lifting suspensions on certain federal oil and gas leases in Montana;

WHEREAS Plaintiffs and Federal Defendants (the Parties) have identified active leases that Plaintiffs have standing to challenge in this action (identified leases), which are listed on Attachment 1 to this Agreement;

WHEREAS Plaintiffs maintain that with respect to the identified leases, the Federal Defendants failed to adequately consider alternatives to prevent emissions and waste of methane from oil and gas development and cumulative effects of oil and gas development and climate change on multiple use resources;

WHEREAS Federal Defendants dispute Plaintiffs' allegations and maintain that their NEPA assessment of alternatives and cumulative impacts for the identified leases complied with NEPA;

WHEREAS the Bureau of Land Management (BLM) is proposing to update its regulations to reduce the waste of natural gas from flaring, venting, and leaks from oil and gas production operations on public and Indian lands;

WHEREAS BLM's proposed rule seeks to minimize waste of natural gas;

WHEREAS BLM's proposed rule would reduce emissions that worsen climate change;

WHEREAS Plaintiffs retain the right to challenge BLM's final regulation to reduce the waste of natural gas and, in addition, to raise concerns regarding climate change and natural gas pollution and waste during BLM's consideration of applications for permit to drill pertaining to the identified leases and to challenge

BLM's final agency actions pertaining thereto;

WHEREFORE, the Parties now believe it is in the interests of the Parties and judicial economy to resolve the claims in this action without protracted litigation and hereby stipulate and agree to the following:

1. Federal Defendants agree to provide direct notice to Plaintiffs when an APD is submitted on the identified leases and will allow a 30-day public comment period on APD NEPA documents prior to any decision on APDs for the identified leases and further agrees to post the opening of any such comment period on the appropriate ePlanning NEPA Register project site, provided that this requirement only applies through December 31, 2018.

2. Federal Defendants agree to consider, as conditions of approval, measures to account for and to reduce natural gas emissions from development on the identified leases in conjunction with their review of applications for permit to drill, provided that the Federal Defendants' agreement to consider use of conditions of approval to address such issues is not an agreement that such conditions will be appropriate for use on any of the identified leases.

3. *Dismissal of Action.* Plaintiffs agree to file a motion to dismiss this action with prejudice in exchange for Federal Defendants' commitments contained herein.

4. *Representative Authority.* The undersigned representatives certify they are fully authorized by the Party or Parties whom they represent to enter into the terms and conditions of this stipulated agreement and to legally bind the Parties to it.

5. *Mutual drafting.* It is hereby expressly understood and agreed that this stipulated agreement was jointly drafted by the Plaintiffs and Federal Defendants. Accordingly, the Parties hereby agree that any and all rules of construction, to the effect that ambiguity is construed against the drafting Party, shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this stipulated agreement.

6. This stipulated agreement contains all of the agreements between the Parties. The Parties agree that any other prior or contemporaneous representations or understandings not explicitly contained in this stipulated agreement, whether written or oral, are of no further legal or equitable force or effect. Nothing in this stipulated agreement shall be construed to prohibit or otherwise restrict Plaintiffs from seeking and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412. Federal Defendants reserve the right to oppose any such request. Any subsequent modifications to this stipulated agreement must be in writing, and must be signed and executed by the Parties.

7. This stipulated agreement does not constitute an admission by any Party to any fact, claim, or defense in this suit.

8. The Parties understand that notwithstanding their efforts to comply with the commitments contained herein, events beyond their control may prevent or delay performance and compliance. Such events may include natural disasters, as well as unavoidable legal barriers or restraints, including those arising from actions of persons or entities that are not party to this stipulated agreement. Force majeure shall be narrowly construed, shall not continue beyond the circumstances and conditions that prevent timely performance, and shall not apply if alternative means of compliance are available. The Party claiming force majeure shall have the burden of proof in proceedings to enforce or modify the stipulated agreement.

The undersigned Parties hereby consent to the form, substance, and entry of the foregoing stipulated agreement.

Respectfully submitted this 17th day of June 2016.

JOHN C. CRUDEN
Assistant Attorney General

/s/ Ruth Ann Storey
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